

Remarks

To put the case in condition for allowance, Applicants have: (a) cancelled claims 1-9, 15-17, and 19-39 without prejudice; and (b) amended claims 10 and 18. No new matter has been added.

Examiner rejected claims 1-39 under 35 U.S.C. 103(a). In particular, the Examiner stated:

Claims 1-20 are rejected under 35 U.S.C 103(a) as being unpatentable over Firestone et al. (U.S. Pat No. 6,247,0072 B1, hereinafter Firestone) in view of Crow et al. (U.S. Patent No. 6,262,724 B1, hereinafter Crow).

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As per claim 10, claim 10 is substantially the same as claim 9 and is thus rejected using the same rationale. Furthermore, regarding utilizing time-scale modification to mitigate underflow or overflow in the buffer, or disruption in playback and providing an indication of a current time-scale modification playback rate to the user (Firestone: col. 3, lines 57-60 and col. 3, lines 37-41).

As per claim 11, which further comprises steps of: providing an indication of a user requested time-scale modification playback rate (Crow: col. 12, lines 53-60 and Firestone: col. 5, lines 10-15).

As per claim 12, wherein the step of playing back comprises associating a time-scale modification playback rate with each entry in a playback buffer queue (Firestone: col. 3, lines 40-45 and col. 4, lines 39-col. 5 lines 1-5).

As per claim 13, wherein the indication comprises a function of recent time-scale modification playback rates (Crow: col. 12, lines 53-60 and Firestone: col. 5, lines 12-26).

As per claim 14, wherein the step of utilizing comprising ignoring or modifying the user input time-scale modification playback rate when it would interfere with providing continuous playback (Firestone: Abstract and col. 3, lines 37-21).

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As per claim 18, Firestone-Crow teaches a method for playback of streaming media received over a non-deterministic delay network at a client device which comprises steps of: receiving the streaming media at the client device, which client device includes a CPU (Firestone: col. 1, lines 30-35); playing back the streaming media; determining a measure of CPU availability (Firestone: col. 2, lines 5-25 and col. 1, lines 32-34); determining a time-scale modification playback rate as a function of the measure of CPU availability (Firestone: col. 1, lines 32-34); and utilizing time-scale modification to prepare the streaming media for playback (Firestone: col. 2, lines 5-25).

As per claim 18, Firestone-Crow teaches a method for playback of streaming media received over a non-deterministic delay network at a client

device which comprises receiving the streamlining media at the client device, which client device includes a CPU; playing back the streaming media; determining a measure of CPU availability; determining a time-scale modification playback rate as a function of the measure of CPU availability; and utilizing time-scale modification to prepare the streaming media for playback (Firestone: col. 1, lines 32-34).

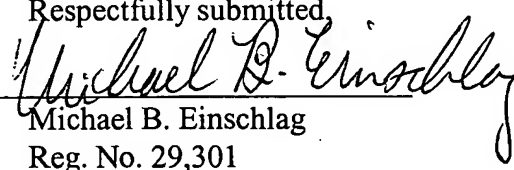
To put the case in condition for allowance, Applicants have: (a) cancelled claims 1-9, 15-17, and 19-39 without prejudice; and (b) amended claims 10 and 18. Applicants respectfully traverse this rejection.

Regarding claim 18: Applicants submit that none of the references teach or suggest time-scale modifying streaming data for playback using a playback rate that is a function of a measure of CPU availability. In particular, the only basis for the Examiner's rejection is that Firestone discloses a client device that includes a personal computer. Applicants submit that this provides no basis whatsoever to support this rejection. Specifically, even if Firestone does teach the use of client devices that include CPUs, there is nothing whatsoever in Firestone or anywhere in the prior art that teaches, hints or suggest, in any manner whatsoever, using a measure of CPU availability to determine a time-scale modification playback rate. There is not even the barest scintilla of evidence for this. As such, when examined in light of the prior art, the use of the measure of CPU availability in the manner set forth in claim 18 is surprising and unexpected. This makes claim 18 is patentable. Hence, Applicant requests the Examiner to withdraw this rejection.

Regarding claims 10-14: Applicants submit that claim 10, like claim 18, includes using a measure of CPU availability to determine a time-scale modification playback rate. As such, Applicants submit that claim 10, and claims 11-14 which depend from claim 10, are patentable over the prior art for at least the same reasons set forth above with respect to claim 18. In addition, claim 10 includes "providing an indication of a current time-scale modification playback rate to the user." The Examiner asserted that Crow et al. teaches this. Applicants submit that the Examiner is wrong. In particular, Crow et al. teaches providing an indication of time elapsed when replaying audio or audio/video media so that a user can tell how much of a work had been played. This has nothing whatsoever to do with "providing an indication of a current time-scale modification playback rate to the user." In further addition, claim 11 includes

“providing an indication of a user requested time-scale modification playback rate.” Nothing in Firestone or Crow et al. teach or suggest doing this. In still further addition, claim 13 includes “wherein the indication comprises a function of recent time-scale modification playback rates.” Nothing in Firestone or Crow et al. teach or suggest doing this. Lastly, claim 14 includes “ignoring or modifying the user input time-scale modification playback rate when it would interfere with providing continuous playback.” Nothing in Firestone or Crow et al. teach or suggest doing this. Thus, in light of the above, claims 10-14 are patentable, and because of this, Applicants respectfully request the Examiner to withdraw this rejection.

In light of the above, Applicants respectfully submit that all the remaining claims are allowable, and Applicants respectfully request the Examiner to reconsider the case and pass the case to issue. Should the Examiner have any questions or wish to discuss any aspect of the application, a telephone call to the undersigned would be welcome.

Respectfully submitted,
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